

HB 1219 -- UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES (Elmer)

COMMITTEE OF ORIGIN: Committee on Workforce Development and Workplace Safety

This bill changes the laws regarding unlawful discriminatory employment practices under the Missouri Human Rights Law and establishes the Whistleblower Protection Act.

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES UNDER THE MISSOURI HUMAN RIGHTS LAW

The bill:

- (1) Defines the term "because of" or "because", as it relates to a decision or action, to mean the protected criterion was a motivating factor unless the decision or action has an adverse impact on the protected criterion, in which case courts must rely on judicial interpretation of federal civil rights and employment discrimination laws;
- (2) Revises the term "employer" by specifying that it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and does not include an individual employed by an employer; certain tax-exempt private membership clubs, excluding labor organizations; or corporations and associations owned and operated by religious or sectarian groups;
- (3) Specifies that any party to certain unlawful discriminatory practice actions may demand a trial by jury;
- (4) Specifies that an award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages awarded;
- (5) Specifies that the amount of damages awarded for each plaintiff cannot exceed the amount of the actual back pay plus interest, court costs, reasonable attorney fees, and other damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees;
- (6) Prohibits punitive damages from being awarded against the state or any of its political subdivisions except for claims for discriminatory housing practices authorized in Section 213.040,

RSMo; and

(7) Specifies that the provisions regarding damage awards do not apply to an alleged violation of Section 213.040, RSMo, unlawful housing practices; Section 213.045, discrimination in commercial real estate loans; and Section 213.050, discrimination in real estate sales and rental organizations, but the provisions will apply to an alleged violation of Section 213.070, other specified unlawful discriminatory practices, by an employer.

WHISTLEBLOWER PROTECTION ACT

The Whistleblower Protection Act is established which places in statute existing common law exceptions to the at-will employment doctrine making it an unlawful employment practice for an employer to discharge or retaliate against an individual who is a protected person. The bill:

(1) Defines the term "because of" or "because", as it relates to a decision or action, to mean the protected criterion was a motivating factor;

(2) Defines "proper authorities" as a governmental or law enforcement agency or an officer or the employee's human resources representative employed by the employer;

(3) Defines "protected person" as a person who has reported to the proper authorities an unlawful act of the employer or its agent or serious misconduct of the employer or its agent that violates a state law or regulation or a rule of a governmental entity; a person who has refused to carry out a directive issued by the employer or its agent that if completed would be a violation of the law; or a person who engages in conduct otherwise protected by statute or regulation;

(4) Specifies that the provisions of the act will provide the exclusive remedy for any and all unlawful employment practices described in the act and voids any common law causes of action to the contrary;

(5) Specifies that a protected person aggrieved by a violation will have a private right of action for damages in a circuit court. The Missouri Human Rights Commission will not have jurisdiction to review or adjudicate claims brought under these provisions. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award to the plaintiff actual and punitive damages;

(6) Specifies that any party to an action under these provisions may demand a trial by jury; and

(7) Specifies that the court may award the plaintiff actual and punitive damages. An award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages awarded. The amount of all damages awarded for each complainant cannot exceed the amount of the actual back pay plus interest, other equitable relief, and other damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.